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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/565,782      | 02/09/2006  | Frederic Neftel      | 2590-148            | 7591             |

23117 7590 05/15/2007  
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| EXAMINER |
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BOUCHELLE, LAURA A

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| ART UNIT | PAPER NUMBER |
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3763

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05/15/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/565,782

Applicant(s)

NEFTEL ET AL.

Examiner

Laura A. Bouchelle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 12-14, 17-21, 25, 35-37 and 39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 12-14, 17-21, 25, 35-37 and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 1/25/06.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Claim 36 recites the limitation "a tight connection between the membrane and the valves" in line 2. There is insufficient antecedent basis for this limitation in the claim.
2. Claim 39 recites the limitation "positioning of the tube" in line 2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-8, 12-14, 19, 20, 25, 37, 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Goldrath (US 5437629). Goldrath discloses a fluid delivery system comprising a single peristaltic pump 36, a liquid supply means 16, a patient conduit 7, a drain line 44, two hub chambers 12, 24, valve means, an enter line 35, and exit line 38, several supply ports 16, 50, and a warmer system 24. The device is capable of being attached to different kinds of liquids.

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5. Claim 19 is considered to be product by process claims. These claims are not limited to the manipulations of the recited steps, only the structure implied but the steps. The patentability of a product does not depend on its method of production. See MPEP 2113.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 17, 18, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldrath in view of Dominiak et al (US 5478211). Claim 17 differs from Goldrath in calling for the pump and distribution system to form a single cartridge. Claim 36 calls for a cartridge loading means. Dominiak teaches an infusion pump having the pump and distribution system contained in a cartridge so that the patient can be ambulatory while receiving the infusion. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Goldrath so that the system is contained in a cartridge so that the patient can be ambulatory.

8. Claim 18 differs from Goldrath in calling for vibration attenuation means. Dominiak teaches an infusion pump having a vibration attenuation means to prevent unnecessary wear and tear on the pump (Col. 17, lines 29-31). Therefore, it would have been obvious to one of

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ordinary skill in the art at the time of invention to modify the device of Goldrath to have an vibration attenuation means as taught by Dominiak to prevent wear and tear on the pump.

9. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goldrath in view of Lavender (US 4980054). Claim 21 differs from Goldrath in calling for the hub to have a flexible membrane including the valve elements. Lavender teaches a fluid pump comprising membranes that control the opening and closing of the valves so that the flow of the fluid can be controlled (Col. 20, lines 18-25). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Goldrath to have membranes and valves as taught by Lavender to control the flow of fluid.

10. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goldrath in view of Lawless et al (US 5078362). Claim 35 differs from Goldrath in calling for the system to include an air sensor. Lawless teaches a fluid pump comprising an air sensor 60 that detect the presence of air bubbles to prevent a harmful air embolism for being introduced into the patient (Col. 6, lines 48-56). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Goldrath to include an air sensor as taught by Lawless to prevent an air embolism from being introduced into the patient.

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***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A. Bouchelle whose telephone number is 571-272-2125. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura A Bouchelle  
Examiner  
Art Unit 3763



  
MATTHEW DeSanto  
5/11/07